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7  
8 United States District Court

9 Southern District Of California

10 **(Honorable Larry A. Burns)**

11 United States Of America,

12 Plaintiff,

13 v.

14 **Nicole Kissane (2),**

15 Defendant.

) Case No.: 15cr1928-LAB

) **Memorandum of Points and Authorities in**  
) **Support of Defendant's Motion to Suppress**  
) **Statements**

17  
18 **I. Introduction**

19 Federal agents attempted to interrogate Ms. Kissane on two occasions. First, on  
20 December 18, 2013, after the execution of the search warrant at her mother's home, FBI  
21 Special Agents Frye and Biebesheimer attempted to interrogate Ms. Kissane. At the very  
22 beginning of the interview, the following occurs:

23 Nicole Kissane: I don't want to speak to you until I have a lawyer.

24 Agent Frye: Well, your not under arrest, your not in our custody, we're not  
25 here to detain you or anything of that nature. ... Um, as you're  
26 not under arrest and not in our custody, you do not have a court  
27 appointed attorney appointed for you. If you don't want to  
28 answer questions, that's fine. I want you to hear us out. If  
choose to talk to us that's fine, if not, that's fine as well.

1 See Exhibit A (Audio Recording of Interrogation). Despite Ms. Kissane's clear  
2 invocation of her right, Agents Frye and Biebesheimer continue to attempt to elicit  
3 incriminating responses from Ms. Kissane for nearly an hour.

4 Second, on July 24, 2014, federal agents took Ms. Kissane into custody and  
5 attempted to interrogate her. Prior to advising Ms. Kissane of her *Miranda* rights, Agents  
6 Frye and Biebesheimer asked background and biographical questions. See Exhibit B  
7 (Video Recording of Interrogation). Ms. Kissane refused to answer any of their  
8 questions. She also refused to answer their questions after being advised her of *Miranda*  
9 rights.

10 Considering Ms. Kissane validly invoked her rights during both interrogation  
11 attempts, it seems unimaginable that the government would attempt to introduce any  
12 evidence from either. This motion is filed as an abundance to caution to suppress any  
13 statements, silence or alleged nervousness made during either interrogation.

## 14 **II. Suppress Statements**

15 It is well established that “[b]efore a defendant’s self-incriminating statements may  
16 be admitted into evidence, ‘a heavy burden rests on the government to demonstrate that the  
17 defendant knowingly and intelligently waived his privilege against self-incrimination and  
18 his right to retained or appointed counsel.’” *United States v. Rodriguez*, 518 F.3d 1072,  
19 1076 (9th Cir. 2008) (quoting *Miranda v. Arizona*, 384 U.S. 436, 475 (1966)). A valid  
20 *Miranda* waiver must be “made with a full awareness of both the nature of the right being  
21 abandoned and the consequences of the decision to abandon it.” *Berghuis v. Thompson*,  
22 130 S.Ct. 2250, 2260 (2010). Moreover, this Court must “indulge every reasonable  
23 presumption against waiver of fundamental constitutional rights.” *United States v. Heldt*,  
24 745 F.2d 1275, 1277 (9th Cir. 1984). Here, Ms. Kissane validly invoked her right to an  
25 attorney during the first interrogation and her right to remain silent in the second.  
26 Therefore, all evidence seized or derived from the interrogations should be suppressed.

1 **III. Conclusion**

2 For the above reasons, Ms. Kissane moves this Court to suppress statements as set  
3 forth above.

4 Respectfully submitted,

5  
6 DATED: July 19, 2016

*/s/ John C. Ellis, Jr.*

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**CERTIFICATE OF SERVICE**

Counsel for the Defendant certifies that the foregoing pleading has been electronically served on the following parties by virtue of their registration with the CM/ECF system:

John N. Parmley  
Assistant U.S. Attorney

Michael F. Kaplan  
Assistant U.S. Attorney

Respectfully submitted,

DATED: July 19, 2016

/s/ John C. Ellis, Jr.

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